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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,178	08/21/2001	Brian J. Brown	S63.2N-5605-US05	8077
490	7590	08/17/2006	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			PREBILIC, PAUL B	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/934,178

Applicant(s)

BROWN ET AL.

Examiner

Paul B. Prebilic

Art Unit

3738

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 9-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.



Paul B. Prebilic
Primary Examiner
Art Unit: 3738

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant argues that the objections to the claims and specification should be withdrawn because, in his view, the drawings adequately disclose the "peaks" and "troughs." However, the Examiner asserts that if these features are inherent, then they should be made explicit to the specification so that it is clear what elements of the drawings are said elements. This would make it clear to anyone of the art what features of the claims correspond to the features in the disclosure.

As to the prior art rejection, the ground of rejection of the Final Office action was the same as in the non-final action before it. Likewise, the remarks presented by the Applicant in the August 7, 2006 response are mostly a rehash of what was set in response filed prior to the Final Office action. However, now the Applicant asserts that it is unclear how the ends can be offset in a circumferential direction. Even though this line of argument is not timely, the Examiner asserts that he adequately explained his position in the Final Office action. To quote therefrom, "Applicant argues that the ends of the cells are not offset in a circumferential direction. However, the Examiner disagrees and asserts that the ends of the cells are offset in a circumferential direction when that direction is taken along the circumference of the cells. For this reason, the rejection has been maintained. In addition, Applicant argues, with regard to claim 17, that the peaks of the proximal portion are not circumferentially offset for the troughs of the distal portion. However, as explained in the rejection, the circumferential offset can be along the circumference of the cell not necessarily along a circumference of the stent. In fact, the stent of claims 17-20 does not clearly have a circumference because stent does not have particular shape. Furthermore, what one calls the peak of one band and the trough of another band could be oriented in opposite directions. There is no language in the claim that defines, for example, the peaks project in a proximal direction and the troughs project in a distal direction. In other words, the peaks of one band could project in a proximal direction and the troughs of an adjacent band could also project in a proximal direction. It would be an error on the Examiner's part to read such limitations into the claims."

As to the meaning of "offset", the Examiner has noted that the Applicants are using it in a manner that is not the broadest reasonable interpretation possible. Furthermore, it is noted that there is no clear, precise, and deliberate special definition for the term "offset" in the specification. The broadest reasonable definition for the term "offset" includes (1) "something counterbalancing something else", (2) "something set apart", or (3) "set back"; MSN Encarta online dictionary definitions for "offset." For this reason, the fact that one end of Kleshinski's cell(s) is set apart, counterbalanced with, or set back from the other end(s) is sufficient to meet the claim language.